

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555-jmp

- - - - -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS INC., et al.,

Debtors.

- - - - -x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

August 25, 2011

10:03 AM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Hearing re: Debtors' Sixty-Seventh Omnibus Objection to Claims  
(Valued Derivative Claims)

Hearing re: Debtors' One Hundred Fifty-Fifth Omnibus Objection  
to Claims (Valued Derivative Claims)

Hearing re: Debtors' One Hundred Sixty-Second Omnibus  
Objection to Claims (Valued Derivative Claims)

Hearing re: Debtors' One Hundred Fifty-First Omnibus Objection  
to Claims (No Liability Claims)

Hearing re: Debtors' One Hundred Fifty-Seventh Omnibus  
Objection to Claims (Amended and Superseded Claims)

Hearing re: Debtors' One Hundred Fifty-Eighth Omnibus  
Objection to Claims (Late-Filed Claims)

Hearing re: Debtors' One Hundred Fifty-Ninth Omnibus Objection  
to Claims (Invalid Blocking Number LPS Claims)

Hearing re: Debtors' One Hundred Sixtieth Omnibus Objection to  
Claims (Settled Derivatives Claims)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Hearing re: Debtors' One Hundred Sixty-First Omnibus Objection  
to Claims (Settled Derivatives Claims)

Hearing re: Debtors' One Hundred Ninth Omnibus Objection to  
Claims (Insufficient Documentation)

Hearing re: Debtors' One Hundred Sixty-Third Omnibus Objection  
to Claims (No Liability Derivatives Claims)

Hearing re: Debtors' One Hundred Sixty-Fourth Omnibus  
Objection to Claims (Duplicative LPS Claims)

Hearing re: Debtors' One Hundred Eighteenth Omnibus Objection  
to Claims (To Reclassify Proofs of Claim as Equity Interests)

Hearing re: Debtors' Seventy-Fourth Omnibus Objection to  
Claims (To Reclassify Proofs of Claim as Equity Interests)

Hearing re: Debtors' One Hundred Fifty-Second Omnibus  
Objection to Claims (Amended and Superseded Claims)

Hearing re: First Motion of Mark Glasser to Extend Time for  
Claim

Transcribed by: Hana Copperman

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**A P P E A R A N C E S :**

**WEIL, GOTSHAL & MANGES LLP**

**Attorneys for Debtors and Debtors-in-Possession**

**767 Fifth Avenue**

**New York, NY 10153**

**BY: MARK BERNSTEIN, ESQ.**

**NADYA SALCEDO, ESQ.**

**WEIL, GOTSHAL & MANGES LLP**

**Attorneys for Debtors and Debtors-in-Possession**

**200 Crescent Court**

**Suite 300**

**Dallas, TX 75201**

**BY: ERIN D. ECKOLS, ESQ.**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MILBANK, TWEED, HADLEY & MCCLOY LLP

Attorneys for the Official Committee of Unsecured  
Creditors

One Chase Manhattan Plaza  
New York, NY 10005

BY: BRADLEY SCOTT FRIEDMAN, ESQ.  
DENNIS O'DONNELL, ESQ.

ALSO APPEARING:

MICHAEL PINKO  
PARTY PRO SE

MARK GLASSER  
PARTY PRO SE

1 P R O C E E D I N G S

2 MS. SALCEDO: Good morning, Your Honor. My name is  
3 Nadya Salcedo with Weil here on behalf of the debtors. I'll be  
4 addressing agenda items 1 through 3. Each of these omnibus  
5 objections seek to reduce and allow valued derivative claims on  
6 a nonconsensual basis, and each of these omnibus objections are  
7 going forward today uncontested.

8 Going to the first agenda item, the sixty-seventh  
9 omnibus objection. This omnibus objection was filed in  
10 November of last year objecting to 128 claims. Debtors have  
11 successfully resolved more than half of these claims and  
12 continue to attempt to settle the balance of the claims in this  
13 objection. Debtors have successfully settled an additional  
14 claim from the sixty-seventh omnibus objection filed by the  
15 counterparty Castlerigg Master Investment. Castlerigg has  
16 agreed that debtors should proceed with this settled claim on  
17 an uncontested basis today at the hearing. We therefore  
18 respectfully request that Your Honor grant the proposed sixth  
19 supplemental order reducing and allowing Castlerigg Master  
20 Investment's claim number 27310 to its modified amount as set  
21 out in the debtors' sixty-seventh omnibus objection to valued  
22 derivative claims.

23 THE COURT: That relief is granted.

24 MS. SALCEDO: Thank you. Moving on to the second  
25 agenda item, with respect to the one hundred and fifty-fifth

1 omnibus objection since the original claims hearing on July 21,  
2 2011 one additional counterparty, Blue Angel Claims LLC, has  
3 failed to file a response to the omnibus objection. We  
4 therefore respectfully request that Your Honor grant the  
5 proposed supplemental order reducing and allowing Blue Angel  
6 Claims' claim numbers 4413 and 4414 to their modified amount as  
7 set out in the omnibus objection.

8 THE COURT: Relief is granted as to Blue Angel Claims.

9 MS. SALCEDO: Thank you, Your Honor. Turning now to  
10 the one hundred and sixty-second omnibus objection, the debtors  
11 are seeking to reduce, reclassify in some instances and allow  
12 twenty-three claims relating to fourteen counterparties, all of  
13 which did not file a response to the hundred and sixty-second  
14 omnibus objection. There are twenty-one remaining claims named  
15 in this objection which belong to fifteen counterparties.  
16 These counterparties either filed timely responses or were  
17 granted extensions to the response deadline by debtors.  
18 Settlement discussions have begun in a number of these, and  
19 debtors respectfully request that this Court adjourn these  
20 hearings as to the twenty-one claims to October 5, 2011 so the  
21 debtors may try to resolve these claims with the  
22 counterparties.

23 We have a proposed order for both the reduction and  
24 the adjournments for Your Honor and respectfully request that  
25 you grant the debtors a hundred and sixty-second omnibus

1 objection reducing, reclassifying in some instances and  
2 allowing the twenty-three claims for which debtors received no  
3 response and adjourning the balance of the claims.

4 THE COURT: That relief is granted as to the one  
5 hundred and sixty-second omnibus objection.

6 MS. SALCEDO: Thank you, Your Honor. If there are no  
7 questions I'll turn the podium to my colleagues.

8 THE COURT: All right.

9 MS. ECKOLS: Good morning, Your Honor. Erin Eckols  
10 with Weil for the debtors. I will be handling the uncontested  
11 agenda items 4 through 10 this morning, starting with agenda  
12 item number 4. This is a carryover item from the debtors' a  
13 hundred and fifty-first omnibus objection that was heard and  
14 granted at the July 21, 2011 claims hearing. The a hundred and  
15 fifty-first omnibus objection sought to disallow and expunge  
16 claims for which the debtors have no liability. Today we are  
17 proceeding solely as to claim 30569 by Clayton Services, Inc.  
18 Counsel for Clayton Services had requested an adjournment and  
19 then notified the debtors that Clayton did not oppose the  
20 objection. Accordingly, the debtors are proceeding today  
21 uncontested and respectfully request that the Court grant the  
22 hundred and fifty-first omnibus objection as to claim 30569.

23 THE COURT: The objection is granted as to claim  
24 30569.

25 MS. ECKOLS: Moving to agenda item number 5, the



1 hundred and fifty-seventh omnibus objection, it seeks to  
2 disallow and expunge claims that were amended and superseded by  
3 subsequently filed claims by the same creditor for the same  
4 obligation. The debtors did not receive any responses to the  
5 objection and respectfully request that the Court grant the  
6 debtors a hundred and fifty-seventh omnibus objection.

7 THE COURT: A hundred and fifty-seventh omnibus  
8 objection to claims is granted.

9 MS. ECKOLS: Moving to agenda item number 6, this is  
10 the debtors' a hundred and fifty-eighth omnibus objection. It  
11 seeks to disallow and expunge claims that were filed after the  
12 applicable bar date. The debtors received one formal response,  
13 which has been resolved, and the debtors notified the claimant  
14 accordingly. The debtors also adjourned the objection as to  
15 three other claims.

16 The debtors are moving today as to the balance of the  
17 claims on an uncontested basis and respectfully request that  
18 the Court grant the hundred and fifty-eighth omnibus objection.

19 THE COURT: The hundred and fifty-eighth omnibus  
20 objection to claims is granted on an uncontested basis.

21 MS. ECKOLS: Moving to agenda item number 7, the  
22 debtors' a hundred and fifty-ninth omnibus objection, seeks to  
23 disallow and expunge claims for Lehman program securities that  
24 provided blocking numbers that were invalid. The bar date  
25 order required claimants seeking to recover for Lehman program

1 securities to obtain a blocking number from the applicable  
2 clearing agency, Euroclear or Clearstream, and to provide it  
3 with their claim.

4 For the claims on the hundred and fifty-ninth omnibus  
5 objection the debtors were unable to reconcile the blocking  
6 numbers provided by the claimants with the blocking numbers  
7 provided by the issuing clearing agencies. The debtors have  
8 been able to resolve the objection as to certain claims on the  
9 hundred and fifty-ninth omni and have adjourned the objection  
10 as to other claims while the parties seek a potential  
11 resolution.

12 The debtors are moving on an uncontested basis today  
13 as to the balance of the claims on the hundred and fifty-ninth  
14 omnibus objection and respectfully request that the Court grant  
15 the objection.

16 THE COURT: The objection is granted on an uncontested  
17 basis.

18 MS. ECKOLS: Thank you, Your Honor. Moving to agenda  
19 item number 8, the one hundred and sixtieth omnibus objection  
20 to claims, it seeks the modification and allowance of claims  
21 for which the parties have reached an agreement with respect to  
22 the claim amount, classification and/or debtor entity that is  
23 not reflected on the claimant's proof of claim. The omnibus  
24 objection is seeking to modify those claims to conform to the  
25 parties' agreement. The debtors received one formal response

1 from Barton Creek Senior Living Center. The debtors agreed to  
2 withdraw the objection as to the Barton Creek claims, and the  
3 response from Barton Creek was a reservation of rights. Per  
4 the debtors' agreement the Barton Creek claims are identified  
5 as claims for which the objection has been withdrawn on the  
6 order that is being submitted today.

7 The debtors also adjourned the objection as to three  
8 claims. The debtors are moving on an uncontested basis as to  
9 the balance of the claims on the hundred and sixtieth omnibus  
10 objection and respectfully request that the Court grant the  
11 objection.

12 THE COURT: I am prepared to do that. I just have a  
13 question about the disposition of the Barton Creek response.  
14 Is the withdrawal of that objection with respect to Barton  
15 Creek with or without prejudice?

16 MS. ECKOLS: It's without prejudice, Your Honor. It's  
17 my understanding that the termination agreement that was signed  
18 contained an error in it, and the parties are seeking to  
19 correct that, Your Honor.

20 THE COURT: All right. It's granted in the manner  
21 that you've described on the record.

22 MS. ECKOLS: Thank you, Your Honor. Agenda item  
23 number 9 is the debtors' one hundred and sixty-first omnibus  
24 objection. It seeks the disallowance and expungement of  
25 derivative claims that have been settled between the parties

1 such that the debtors have no liability for those claims. The  
2 omnibus objection is seeking to expunge those derivative claims  
3 to effectuate the parties' agreement. The debtors did not  
4 receive any response to the objection and are moving on an  
5 uncontested basis as to all the claims on said objection.  
6 Accordingly, the debtors respectfully request that the Court  
7 grant the debtors a hundred and sixty-first omnibus objection.

8 THE COURT: The hundred and sixty-first omnibus  
9 objection to claims is granted.

10 MS. ECKOLS: Thank you, Your Honor. I'm now going to  
11 pass the podium to my colleague, Mark Bernstein.

12 THE COURT: Okay.

13 MR. BERNSTEIN: Good morning, Your Honor. Mark  
14 Bernstein from Weil for the Lehman Chapter 11 debtors. The  
15 next item on the agenda is the hundred and ninth omnibus  
16 objection to claims. This relates to certain claims relating  
17 to RMBS securitizations. The claims are based on breaches of  
18 representations and warranties that the claim acknowledges  
19 claimant made when they sold the loans into the  
20 securitizations. This objection is a carryover from a prior  
21 hearing. These particular claims of HSBC as trustee, the  
22 objection deadline was extended for these claims. The  
23 objection deadline has now passed. HSBC no longer opposes the  
24 expungement and disallowance of these particular claims, so we  
25 request Your Honor grant this hundred and ninth omnibus

1 objection as to the HSBC claims on an uncontested basis.

2 THE COURT: It's granted as to that claim on an  
3 uncontested basis.

4 MR. BERNSTEIN: Thank you. The hundred and sixty-  
5 third omnibus objection relates to certain derivative contracts  
6 where claims were filed against the debtors. The debtors have  
7 reviewed these contracts and determined that either no amounts  
8 are owed by the debtors or, in fact, the debtors are actually  
9 owed money on these derivative contracts. There were two  
10 responses filed to this objection. Both of those -- the  
11 objection as to both of those responses and both of those  
12 claims has been adjourned, and we are going forward on an  
13 uncontested basis and respectfully request Your Honor grant the  
14 hundred and sixty-third omnibus objection.

15 THE COURT: One hundred and sixty-third omnibus  
16 objection is granted on an uncontested basis.

17 MR. BERNSTEIN: Thank you, Your Honor. The hundred  
18 and sixty-fourth omnibus objection relates to duplicative  
19 claims that were filed based on the Lehman program securities.  
20 In some cases these claims are duplicative because the claim  
21 was filed by the beneficial holder and also the record holder,  
22 or in other cases two claims were filed by the same beneficial  
23 holder. In either case there were no responses filed, and this  
24 is going forward on an uncontested basis, and we respectfully  
25 request Your Honor granted the hundred and sixty-fourth omnibus

1 objection.

2 THE COURT: A hundred and sixty-fourth omnibus  
3 objection is granted on an uncontested basis.

4 MR. BERNSTEIN: Thank you, Your Honor. The last  
5 uncontested item is the hundred and eighteenth omnibus  
6 objection. This objection seeks to reclassify certain claims  
7 filed based on restricted stock units as equity interests  
8 against the estate rather than claims. This also is a  
9 carryover item where the debtors have previously extended the  
10 objection deadline for the claims remaining on this objection.  
11 Parties did not respond prior to the objection deadline, and  
12 therefore we're going forward again on an uncontested basis and  
13 respectfully request Your Honor grant the hundred and  
14 eighteenth omnibus objection.

15 THE COURT: It's granted on an uncontested basis.

16 MR. BERNSTEIN: Thank you, Your Honor. I will turn  
17 the podium back over to Erin to handle the contested matters.

18 THE COURT: All right.

19 MS. ECKOLS: Your Honor, Erin Eckols again for the  
20 debtors. I will be handling contested agenda items 14 and 15.  
21 Agenda item 14 is a carryover item from the seventy-fourth  
22 omnibus objection. Today we are moving solely as to claim  
23 34908 by Michael Pinko LTD. Mr. Pinko filed a response to the  
24 objection at docket number 14068. The omnibus objection should  
25 be granted as to Mr. Pinko's claim. His claim should be

1 reclassified as an equity interest, because the claim  
2 unambiguously states that it is based on ownership of the  
3 debtor's stock. Stock is an equity security under the  
4 Bankruptcy Code, and, thus, Mr. Pinko has an equity interest  
5 in, but not a claim against, the debtors. Mr. Pinko's response  
6 does not set forth any legal argument for objecting to the  
7 classification of his proof of claim as equity. The response  
8 is limited to the bare statement that his claim should not be  
9 reclassified, and this is not a legally valid basis for  
10 opposing the seventy-fourth omnibus objection.

11 Mr. Pinko is a disappointed shareholder in the  
12 debtors, and he should be treated as such by having his proof  
13 of claim reclassified. Accordingly, the debtors respectfully  
14 request that the Court grant the seventy-fourth omnibus  
15 objection as to claim 34908.

16 THE COURT: Mr. Pinko, are you on the telephone? Are  
17 you there, sir?

18 MR. PINKO: Yes. Hello?

19 THE COURT: Are you Mr. Pinko?

20 MR. PINKO: Yes, My Honor. I am Michael Pinko. I  
21 call you from Israel. First I want to apologize of my not  
22 enough English for the Court, and I want to talk about my  
23 point. My point that company like this company cannot be  
24 broken. It's the worst for the investor; it's the worst for  
25 everybody. And this is my point, to one. Two, I want to ask,

1 to know the Court, how can be that company, a big company like  
2 Lehman Brothers, it's not to -- it was not controlled by the  
3 Federal Reserve or the -- or through the public money or they  
4 understand. I cannot -- I cannot understand. I don't ask the  
5 Judge. I -- I want that my voice to be -- be -- to be listen  
6 and some -- in some place.

7 THE COURT: Okay. Well, let me just make sure I  
8 understand what you're saying. As to the last point, I'm a  
9 bankruptcy judge, and I unable to comment on what the United  
10 States government did prior to the failure of Lehman Brothers.  
11 That's not something that I can comment on. And you are  
12 entitled to your own opinion with respect to that.

13 As to the objection to your proof of claim, that  
14 objection is based upon your being an owner of Lehman  
15 securities, equity securities, and, as a result, not having a  
16 proper claim as an unsecured creditor. Do you acknowledge that  
17 your claim is based upon an equity interest in the debtors?

18 MR. PINKO: My Honor, this was my point. My point  
19 that company like Lehman Brothers cannot be closed. Maybe it's  
20 childish, but this company made to be the built -- built again  
21 and maybe and then, yes, they will stay off of their legs.  
22 This is my point, My Honor.

23 THE COURT: Yes, but do you acknowledge that you're  
24 speaking in your capacity as an equity security holder of  
25 Lehman and not as a creditor?



1 MR. PINKO: Yes, I understand. The more I cannot tell  
2 you nothing.

3 THE COURT: Okay. But you're a stockholder. You're  
4 not a claimant as an unsecured creditor.

5 MR. PINKO: Okay.

6 THE COURT: Is that the --

7 MR. PINKO: Okay. Thank you. Thank you very much.

8 THE COURT: Mr. Pink --

9 MR. PINKO: Okay. Thank you very much.

10 THE COURT: Okay. Thank you, Mr. Pinko. I think what  
11 I've heard you say, although you haven't said it in direct  
12 response to my questions, is that you're upset about the fact  
13 that Lehman is in bankruptcy at all, believe that it would be  
14 desirable for the company to have been maintained as a going  
15 concern, and that you wish, as a result, that your equity might  
16 be worth something someday. That's what I have taken from your  
17 remarks.

18 I can't change the facts. The facts are that Lehman  
19 Brothers current is in a bankruptcy case and has been for  
20 almost three years. That bankruptcy case, while under Chapter  
21 11, is a liquidation of Lehman's assets not only in the United  
22 States but in other jurisdictions where Lehman affiliates are  
23 being administered. Under the circumstances I am going to  
24 grant the objection as to your proof of claim inasmuch as that  
25 proof of claim is based upon your ownership of stock and not a

1 claim in your capacity as an unsecured creditor. As to that  
2 very technical matter, I am granting the debtors' objection.  
3 As to any of your own personal opinions you're, of course,  
4 entitled to them and may assert them anyplace you like, but the  
5 objection is granted.

6 MR. PINKO: Thank you, Mr. -- thank you very much for  
7 your explanation, and thank you very much.

8 THE COURT: All right. Thank you.

9 MR. PINKO: Thank you.

10 THE COURT: Now we'll proceed to the next agenda item.

11 MS. ECKOLS: Thank you, Your Honor. Agenda item  
12 number 15 is the debtors' one hundred and fifty-second omnibus  
13 objection. This is a carryover item from the objection which  
14 Your Honor heard and granted at the July 21st claims hearing.  
15 The hundred and fifty-second omnibus objection sought to  
16 disallow and expunge claims that were amended and superseded by  
17 subsequently filed claims by the same creditors for the same  
18 alleged obligations.

19 Today the debtors are moving with respect to two  
20 claims. Claim 34834 by Rolf Lautenschlager. Mr.  
21 Lautenschlager's response is docket entry 18521. We're also  
22 moving with respect to claim 1715 by Helge-Christian Schmitt.  
23 Mr. Schmitt filed an informal response that the debtors do not  
24 believe was docketed.

25 The hundred and fifty-second omnibus objection should

1 be granted as to the Lautenschlager and Schmitt claims. With  
2 respect to Mr. Lautenschlager's claim, 34834, it seeks to  
3 recover for a Lehman program security. Mr. Lautenschlager  
4 subsequently filed claim 64469 to provide the required blocking  
5 number for that security. Accordingly, Mr. Lautenschlager's  
6 claim 64469 amends his earlier filed claim, 34834.

7 Mr. Lautenschlager's response appears based on the  
8 incorrect belief that the debtors are seeking to expunge his  
9 later filed claim, 64469. The crux of Mr. Lautenschlager's  
10 response is that he did not realize when he filed his original  
11 claim that a blocking number was required. However, this is  
12 irrelevant to the relief the debtors are seeking in the hundred  
13 and fifty-second omnibus objection. The debtors are simply  
14 seeking to expunge claim 34834, so the claims register reflects  
15 that Mr. Lautenschlager is only prosecuting one claim in these  
16 Chapter 11 cases.

17 With respect to Mr. Schmitt's claim, 1715, it is  
18 seeking to recover for a certain Lehman Brothers security. Mr.  
19 Schmitt subsequently filed claim 2110 based on that same  
20 security. Although it is not entirely clear from the claims,  
21 it appears that Mr. Schmitt filed claim 2110 to provide  
22 information regarding the conversion rate for dollars to euros.  
23 Mr. Schmitt's response is limited to the bare statement that he  
24 opposes the objection and that his claim, quote, "hasn't been  
25 discharged by now and is still existing".

1 This is not a legally valid basis for opposing the  
2 debtors' a hundred and fifty-second omnibus objection. Through  
3 the hundred and fifty-second omnibus objection the debtors are  
4 simply seeking to expunge claim 1715 so the claims register  
5 reflects that Mr. Schmitt is only prosecuting one claim in  
6 these proceedings.

7 In conclusion, Mr. Lautenschlager and Mr. Schmitt have  
8 provided no legally cognizable basis for opposing the hundred  
9 and fifty-second omnibus objection, and the debtors  
10 respectfully request that it be granted as to claims 34834 and  
11 1715.

12 THE COURT: All right. Thank you. Let me ask if  
13 either Mr. Lautenschlager or Mr. Schmitt are in court or on the  
14 telephone to participate in today's hearing.

15 THE OPERATOR: No telephonic appearance, Your Honor.

16 THE COURT: I'm sorry? I could not hear.

17 THE OPERATOR: There are no telephonic appearances.

18 THE COURT: All right. There are no telephonic  
19 appearances.

20 THE OPERATOR: By those two names, no, Your Honor.

21 THE COURT: All right. And who is this speaking?

22 THE OPERATOR: The CourtCall operator.

23 THE COURT: All right. I just wanted the record to  
24 reflect who that was. I've reviewed the written response of  
25 Mr. Lautenschlager. I did not see a response of Mr. Schmitt,

1 but I accept the representation of counsel concerning its  
2 content, and I understand the relief that the debtor now seeks  
3 to be limited to claim 34834 as to Mr. Lautenschlager and claim  
4 1715 as to Mr. Schmitt, and that both of these gentlemen have  
5 surviving claims, in the Lautenschlager 64469, in the case of  
6 Schmitt 2110. Under the circumstances the rights of these  
7 individuals will not be adversely affected by granting the  
8 relief, but, rather, the claims register will be clarified.  
9 Under the circumstances the motion is granted.

10 MS. ECKOLS: Thank you, Your Honor. And now I'm going  
11 to turn over the podium to my colleague, Mark Bernstein, for  
12 the final item on today's agenda.

13 THE COURT: All right.

14 MR. BERNSTEIN: Your Honor, Mark Bernstein here from  
15 Weil on behalf of the Lehman debtors. The final item on the  
16 agenda is a motion of Mark Glasser pursuant to Bankruptcy Rule  
17 9006(b) seeking to file a late claim in these cases. The  
18 debtors have objected to this claim and asserted that Mr.  
19 Glasser has not satisfied the excusable neglect standard in  
20 order to be able to file a late claim and Mr. Glasser has  
21 sought to have an evidentiary hearing on this matter, and I  
22 believe I see Mr. Glasser in the courtroom today.

23 The debtors are prepared and would like a few minutes  
24 to cross-examine Mr. Glasser if he, in fact, does put on direct  
25 testimony.

1 THE COURT: Mr. Glasser, why don't you come forward?

2 MR. GLASSER: To the desk?

3 THE COURT: Well, you can start by coming to the  
4 podium. Mr. Glasser, do you intend to present evidence today?

5 MR. GLASSER: Yes.

6 THE COURT: And do you intend to do that by means of  
7 your own testimony?

8 MR. GLASSER: Yes.

9 THE COURT: Do you have any documents to present in  
10 support of anything you're going to say?

11 MR. GLASSER: Not with me at this time, but I can  
12 provide documentation on part of what I'm going to say.

13 THE COURT: What documentation would you provide if  
14 you were in a position to provide it?

15 MR. GLASSER: Well, there are a few reasons why I felt  
16 that I should be allowed to file late.

17 THE COURT: But before we get into that, I'm just  
18 asking a very narrow question relating to documents. What  
19 documents would you want to present as evidence to support your  
20 position that you are an individual who should be allowed to  
21 file a late claim?

22 MR. GLASSER: Well, I'd like to file a document that  
23 actually explains why this claim is an unusual claim that's a  
24 one-of-a-kind claim. Secondly, I'd like to file -- I'd like to  
25 bring with me a document that shows that I never received

1 notification of this, because I was also at the same time,  
2 moving, and information possibly by affidavit that the office  
3 in fact had moved during the same period of time, and made it  
4 impossible for me to receive information. I had no idea that  
5 these claims were due. And I can show that in, like, three or  
6 four different ways.

7 THE COURT: Well, one of the problem -- before we go  
8 forward, one of the problems with your now requesting the  
9 opportunity to present documents in support of your position is  
10 that this is a matter which has been pending for quite a long  
11 time. Your declaration, which I have before me, is dated  
12 November 30, 2009 which is about a year and three-quarters ago.  
13 The matters relating to your motion to file a late claim have  
14 been on the docket repeatedly and have been adjourned. We  
15 don't need to go into the reason --

16 MR. GLASSER: Severe health problems, including bypass  
17 surgery.

18 THE COURT: I'm sorry about your health issues. But  
19 when last we were together, I think I made it clear that today  
20 was the day that we were going to go forward with evidence, and  
21 you either needed to get a lawyer, or you're going to proceed  
22 on your own. I take it because you're here without counsel  
23 that you intend to proceed on your own.

24 MR. GLASSER: Yes. Yes, Your Honor.

25 THE COURT: Did you make any efforts to obtain

1 counsel?

2 MR. GLASSER: I talked to a few attorneys.

3 THE COURT: I don't need to know about those  
4 conversations. I just want to know whether or not after  
5 exploring the option of obtaining counsel to represent you, you  
6 have elected to proceed on your own. Is that correct?

7 MR. GLASSER: Yes. Yes, Your Honor.

8 THE COURT: All right. I'd like to hear from the  
9 debtor before we move forward as to the debtors' position with  
10 regard to today's contested hearing. One possible  
11 interpretation of Mr. Glasser's informal remarks on the podium  
12 would be that he would like an opportunity to present  
13 additional evidence after today or would like today's hearing  
14 to be put off to that day in the future when he has those  
15 documents. I'd like to know the debtors' position with respect  
16 to that matter.

17 MR. BERNSTEIN: Your Honor, the debtors were prepared  
18 to go forward today. Based on your comments at the last  
19 hearing, we had thought this was the day that this would  
20 actually go forward. Having said that, if Mr. Glasser is going  
21 to present, I guess, documents at some point in the future, I'm  
22 not sure it makes sense to have part of the evidentiary hearing  
23 today and part in the future, if he is going to be able to  
24 actually provide some documents.

25 So while we're prepared to go forward today, if the --



1 any evidence he presents in the future will be considered in  
2 making a determination, I would think that you might as well do  
3 it all together, maybe at the next claims hearing.

4 THE COURT: Okay. Does the debtor wish to take  
5 discovery or is that something that you will simply defer until  
6 he presents whatever documents he has to present?

7 MR. BERNSTEIN: The debtors do not wish to take  
8 discovery in this matter.

9 THE COURT: All right. Mr. Glasser, let me ask you  
10 another question, if you can come forward. I'd like to know if  
11 the documents that you have identified are in your possession.

12 MR. GLASSER: Two of them are, two out of the four.

13 THE COURT: And I'd like a listing, if you can provide  
14 it, of what these documents are, because what I don't want to  
15 have is a misunderstanding as to what it is that you would be  
16 proposing to offer in evidence. To the extent that these  
17 documents can be stipulated to with the debtor as to their  
18 authenticity and their admissibility, that will make it a lot  
19 easier for us to proceed. You don't have counsel, but the  
20 rules of evidence still apply. What are the documents?

21 MR. GLASSER: Well, two of the documents are my two  
22 leases that indicate that I was in transition between  
23 apartments at the time and didn't receive my mail. And I can  
24 show what happened and why things got lost. Those are in my  
25 possession. The part that's not in my possession right now,

1 but I can obtain it fairly quickly, is the part of the document  
2 that relates to actually what the original claim is about. And  
3 because of the unusual nature of how it came about, it wasn't  
4 clear which category it fell into and it made it very, very  
5 difficult to figure out what type of claim I had to produce, or  
6 if I had to produce a claim at all.

7 Thirdly, at the same time that I was involved in  
8 moving personally, we moved offices as well. Lehman had --  
9 Barclays had no big -- Barclays moved our offices from one  
10 place to another. So I wasn't even in contact with other  
11 people around me. I mean, we were sort of isolated in the new  
12 office and the date came up very quickly, and truly I found out  
13 about this about a month after. So I can produce that as well.

14 THE COURT: What's the document you would produce in  
15 reference to --

16 MR. GLASSER: In that case, I would produce --

17 THE COURT: Let me just finish what I'm saying; I'm in  
18 the middle of a sentence. What is the document that you would  
19 produce in reference to your being in a remote location?

20 MR. GLASSER: I'll get a floor plan. I'll get the  
21 floor plan from Barclays where we were put and what happened.

22 THE COURT: I don't need a document, nor do I think it  
23 would be useful evidence. Your testimony concerning your  
24 alleged isolation will be sufficient and will be subject to  
25 cross-examination on grounds of credibility. I don't know the

1 date that you allegedly were relocated. I don't know the  
2 people who moved with you. I don't know the group that moved.  
3 I don't know the nature of the communications that took place  
4 between that group and others at Barclays. I don't know the  
5 nature of e-mail contact that you had with Barclays' employees.

6 Physical location is a matter of relative unimportance  
7 when it comes to information concerning this case, in light of  
8 the global nature of the case. So if it's someone who was as  
9 close to Lehman as you were, to claim ignorance as to a global  
10 bankruptcy case that had a date of published importance that  
11 everybody in the world who was involved in the Lehman case knew  
12 about, and for you to say you knew nothing about it, is  
13 extraordinary and it goes to your credibility, not to  
14 documents.

15 MR. GLASSER: No, I didn't say that I didn't know that  
16 something had to be done. Actually in my case --

17 THE COURT: If you knew that something had to be done,  
18 you have just acknowledged that you knew about the bar date or  
19 the inquiry notice and should have done more to find this out.  
20 But I'm not prejudging your case. I'm telling you that if you  
21 look at the cases I've already decided in this area, and if you  
22 knew something about the excusable neglect standard in the  
23 Second Circuit, you would realize that you have an almost  
24 impossible burden.

25 MR. GLASSER: My attorney before he resigned from the

1 case several months ago told me that one of the things that  
2 this case would revolve around was the fact that it was  
3 definitely not a very credible argument that you would not know  
4 from your colleagues what was going on. And he said -- he  
5 asked me at that time to focus on that as one of the things  
6 that I should look at in this case. If I'm given the chance,  
7 I'll do the best I can to produce the documents that you need  
8 to decide the case in my favor.

9 THE COURT: Well, the only reason that we're talking  
10 about this at all -- otherwise you would you have been on the  
11 stand and sworn as a witness and exposed to cross-examination  
12 as to your credibility.

13 MR. GLASSER: Okay.

14 THE COURT: As you've just acknowledged, this is much  
15 more a case about your personal credibility than it is about  
16 pieces of paper. But to the extent that there are documents  
17 that you need to support your case and you don't have them with  
18 you, I want to give you that opportunity and the debtor seems  
19 not to be objecting to an adjournment to give you that  
20 opportunity.

21 MR. GLASSER: Right.

22 THE COURT: But you've known about this for some time.  
23 You've had counsel representing you until the time of counsel's  
24 withdrawal. Presumably, you've had an opportunity to discuss  
25 issues relating to your claim with counsel. I don't wish to

1 know anything about those conversations, nor should you talk  
2 about them unless you choose to waive privilege. And that's  
3 your -- yours to waive if you choose to.

4 Does the debtor wish to say anything about all this?

5 MR. BERNSTEIN: Yeah. One comment, Your Honor. Now  
6 having heard the documents that Mr. Glasser is offeri -- or may  
7 offer in the future, if it really -- if the documents are his  
8 leases and show his -- the residence that he lived at at  
9 different times, that, I don't think, changes the debtors'  
10 position on this and would take Mr. Glasser's representation  
11 about this, where he lived. And if that's all he's going to  
12 produce, we would then be prepared to go forward today and --  
13 with questioning. Because I don't think that affects our  
14 questioning or does change the situation.

15 THE COURT: Fine.

16 MR. GLASSER: In addition to that, there's one  
17 significant thing that I do want to produce, the thing that  
18 caused the confusion. It's what the claim arose from. It's  
19 not clear whether this arose from compensation or that the  
20 claim arose from 200 and some-odd thousand dollars was taken  
21 from me accidentally and it was promised to me the following  
22 month, they made a mistake in terms of -- I could go into the  
23 compensation and I can certainly prove that. it was very, very  
24 difficult to find out or talk to anybody about where this claim  
25 or how this claim should be filed because it wasn't clear which

1 part of the bankruptcy procedure this thing should have been --  
2 they took additional compensation from me, money that should  
3 have been paid to me in cash and they converted it to  
4 restricted stock units incorrectly and then, then later on, you  
5 know, when it was supposed to be paid in Sep -- in the  
6 following month, intervening, there was the bankruptcy.

7 And so it was very, very confusing as to what should  
8 be done with this and how this thing should have been handled.  
9 And that's one of the things that I wanted to produce.

10 THE COURT: Well, you can certainly say what you want  
11 to say about the kind of claim you would bring or what the  
12 claim is based on, but that's not what's really before the  
13 Court. The issue before the Court is whether you should be  
14 given the permission to file a late claim, whatever that claim  
15 may consist of. So, I don't know that we need those documents  
16 in order to get to the question of excusable neglect. The  
17 excusable neglect standard would apply regardless of the nature  
18 of the claim and regardless of how confused you were at the  
19 time about the claim.

20 I know generally what you're talking about because I  
21 have your declaration from November 30th, 2009 before me, which  
22 makes some reference to these issues. Your declaration,  
23 presumably, was made based upon your personal knowledge at the  
24 time it was made and will be the subject for cross-examination.  
25 Whether or not debtors' counsel chooses to cross-examine you on

1 that is, frankly, up to them, but I may ask you some questions  
2 about this, too. I don't think we need documents in order to  
3 get into that question.

4 The real question here is what cause do you assert for  
5 not having filed a timely claim. That's the issue.

6 MR. GLASSER: Do you want a response or --

7 THE COURT: No, I think we're going to move into a  
8 much more formal phase because, based upon this discussion  
9 about the documents, the documents themselves seem not to be  
10 particularly pertinent to the issue at hand.

11 So, if you're ready to go forward, you can become a  
12 witness.

13 MR. GLASSER: Okay.

14 THE COURT: Stand over there and please raise your  
15 right hand.

16 (Witness sworn)

17 THE COURT: Be seated please and be sure to peak into  
18 the microphone which is at the table.

19 Now, one of the issues here that makes this a little  
20 bit unusual is that Mr. Glasser doesn't have counsel to ask him  
21 questions on direct nor is direct examination being presented  
22 by means of a formal declaration unless Mr. Glasser's  
23 declaration of November 30, 2009 is treated as the functional  
24 equivalent of his direct examination testimony.

25 So, before we proceed with what may be cross-

1 examination, I'm going to ask Mr. Glasser if he has a copy of  
2 his declaration.

3 THE WITNESS: No, I don't.

4 THE COURT: I'm going to -- do you have an extra copy?

5 MR. BERNSTEIN: I do.

6 THE COURT: We're going to hand you a copy of the  
7 declaration that was submitted in November of 2009 and I'm  
8 going to ask you to read that and to confirm whether or not  
9 this is, for all practical purposes, a recorded statement of  
10 the testimony that you would give as a live witness today.

11 THE WITNESS: There's a few things that are slightly  
12 different.

13 THE COURT: In what respect would you modify the  
14 statements made in your declaration?

15 THE WITNESS: Statement number 8; I didn't move my  
16 residence in 111 Fourth Avenue. Rather, I moved it from 117  
17 East 57th Street over to Fourth Avenue as my legal residence  
18 for tax purposes. I own that apartment. And I moved from 117  
19 East 57th to 200 East 65th. I mean, that is so shown. But I  
20 wasn't living -- you know, I wasn't at 111 Fourth Ave, you  
21 know, as a regular address. I did go there and I did receive  
22 some mail there, but I didn't -- I wanted to clarify that  
23 confusion.

24 The second thing is that number 4; "Since that time,  
25 misallocation resulted in my receiving approximately 200,000



1 less in cash and I should have received" -- that was reduced to  
2 100,000 because Barclays picked up half of it after I remained  
3 with Barclays for one year. In other words, in September of  
4 2010, I received half of that.

5 THE COURT: All right. With those clarifications, are  
6 you --

7 THE WITNESS: The claim isn't as large as --

8 THE COURT: Fine. With those clarifications, do you  
9 agree with the statements made in your declaration from  
10 November of 2009?

11 THE WITNESS: Yes.

12 THE COURT: Are you prepared to treat the declaration  
13 as the equivalent of your direct testimony?

14 THE WITNESS: Well, with regard to the confusion in  
15 number -- with the exception of the regard to confusion in  
16 number 8 and the fact that the claim's been reduced in half in  
17 number 4, yes.

18 THE COURT: Fine. Let's treat this as Mr. Glasser's  
19 direct testimony and you may now cross-examine.

20 MR. BERNSTEIN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BERNSTEIN:

23 Q. Good morning, Mr. Glasser. Thank you for appearing here  
24 today.

25 We're here today because you filed a motion seeking

1 authority to file a claim after the bar date, is that correct?

2 A. Yes.

3 Q. And the claim you're seeking to file is in the  
4 approximately amount of, as you just clarified, about 100,000  
5 dollars?

6 A. Yes.

7 Q. And that's a material amount of money, correct?

8 A. Yes.

9 Q. You used to be an employee of Lehman Brothers?

10 A. Yes.

11 Q. When did you start working at Lehman?

12 A. 2006.

13 Q. What was your position there?

14 A. Director.

15 Q. In what area? What were your -- what was the --

16 A. Broker --

17 Q. -- job -- broker?

18 When did you leave Lehman?

19 A. They went bankruptcy in 2008 and then Lehman was gone.  
20 Lehman left me.

21 Q. Right, right, right. Right after the bankruptcy. So you  
22 were at Lehman a little over two years?

23 A. I would say -- just about two years. I believe I joined  
24 Lehman in October of 2006, I believe. I'd have to look it up.

25 Q. That's okay. That's a good amount of time. You must have

1 developed some relationships or some friendships with some of  
2 your colleagues at Lehman? Is that right?

3 A. Some.

4 Q. And along with the more than 10,000 other employees that  
5 worked at Lehman, you went over to Barclays with that group of  
6 employees right after the bankruptcy? Right?

7 A. Yes.

8 Q. Some of the people that you knew at Lehman went over to  
9 Barclays with you?

10 A. I didn't know many people at Lehman. I knew people in  
11 management, I knew very few other brokers at Lehman.

12 Q. You were aware that Lehman was involved in a bankruptcy  
13 case though, right?

14 A. Most definitely.

15 Q. And the Lehman case was all over in the news in -- back in  
16 2008. Did you ever discuss the Lehman case with any of your  
17 former colleagues or anyone at Barclays?

18 A. Mostly my branch manager. A couple of the other  
19 employees -- when the bankruptcy happened, everything was very  
20 confusing. A lot of people didn't know what to make of it and  
21 I really didn't spend a lot of time discussing it with a lot of  
22 those people.

23 Q. Did you ever read about the case in the newspapers?

24 A. Sure. Yes.

25 Q. Did you ever go on the internet and try to read about the

1 case online and try to see what was happening?

2 A. Not very much.

3 Q. What is your role at Barclays now?

4 A. Director.

5 Q. Same? As a --

6 A. Same --

7 Q. -- broker, as well?

8 A. -- same, yes.

9 Q. So in a normal day at Barclays, as you said, you -- do you  
10 come interact -- do you interact with other former Lehman  
11 employees? I think you mentioned your branch manager?

12 A. My branch manager, sales manager, people who work with me,  
13 a few of the other brokers that I know very well. Apart  
14 from -- unless I have specific business to do with other  
15 brokers, there are very few other ones that I interact with  
16 and -- five, six.

17 Q. As a broker, is it part of your job to stay up on news and  
18 other financial events occurring in the world?

19 A. Specifically the ones related to the stuff that I do with  
20 my clients, yes.

21 Q. And how do you stay up to date on those events? You read  
22 the Times? New York Times?

23 A. I read the Times, I read -- not the whole thing, I read  
24 the Wall Street Journal, I read The Post, I look at Bloomberg  
25 News --

1 A. How about the Financial Times, you ever read that?

2 A. Very rarely.

3 Q. Mr. Glasser, in your affidavit, as you just clarified  
4 today, you used to live at 117 East 57th Street. Is that  
5 correct?

6 A. Yes.

7 Q. And I assume you received mail at that address. Is that  
8 correct?

9 A. Yes, I did.

10 Q. When did you move from that address? Approximately.

11 A. It's a complicated story, but I still had the apartment  
12 until September of 2009, as per an agreement within had with  
13 the landlord. But I moved from the address or began to move  
14 from the address in February of '09, when I took the new lease  
15 on 65th Street.

16 I was basically in between two residences.

17 Q. And when you moved to -- I'm sorry; what street was it?  
18 65th Street?

19 A. 65th Street.

20 Q. When you moved to 65th Street, I -- did you continue to  
21 receive your mail at that address?

22 A. I received some mail there as well.

23 Q. Did you -- bills, newspapers, magazines --

24 A. Some bills. Some bills, I was automatically billed for.  
25 Some bills I received via internet.

1 A. Did you contact any of the -- the cable company, the  
2 electric companies, let them know that you had moved?

3 A. Cable company was typically paid for -- at 65th Street,  
4 the cable company was paid for, I believe, by their retainer --  
5 it was a sublet and it was -- I was renting the apartment from  
6 someone. So, some of the bills were paid for directly.

7 Q. Sure. But other newspapers or other magazines, did you  
8 contact the publishers and let them know that you had moved and  
9 they should deliver it to the new address?

10 A. Newspapers, yes.

11 Q. Did you ever contact Lehman to tell them that you had  
12 moved?

13 A. Sure. I mean, I would've told them that that was not the  
14 address that I -- I always had an address that I received mail.  
15 For some reason, in the conclusion, I didn't get the actual  
16 mail. I don't know where it went, I don't know what happened  
17 to it, but I didn't get it.

18 Q. But after the bankruptcy -- I'm not sure I understood your  
19 answer. After the bankruptcy, did you contact Lehman to tell  
20 them that you had moved?

21 A. After the bankruptcy, no. After the bankruptcy, it would  
22 have been Barclays. And they always had a legal address for  
23 me.

24 Q. Did you receive any information from Lehman following the  
25 bankruptcy? Did you get notice of the bankruptcy at the 57th

1 Street address?

2 A. I'm sure that I did. I'm sure that I did.

3 Q. Thank you for your time, Mr. Glasser; that's all the  
4 questions I have for you today.

5 THE COURT: Now, this is an unusual proceeding, Mr.  
6 Glasser, but on the basis of anything that you've been asked by  
7 counsel for Lehman and different answers that you've made, is  
8 there anything more that you wish to add?

9 THE WITNESS: No, I -- well, other than the fact that  
10 I really did not know that -- maybe it was my fault, but I  
11 really did not see the documents that said that I had to file  
12 this by a certain date. And maybe that was because of my  
13 problem was already starting, concerning some health problems  
14 which led to my bypass surgery the following year and it's  
15 entirely possible that mail was sent to one or more of the  
16 addresses, but I just never actually remember reading anything.

17 THE COURT: Let me ask you a couple questions, if I  
18 may. There's a period from February of 2009 through September  
19 of 2009 when you have access to two apartments, correct?

20 THE WITNESS: Actually three, yes.

21 THE COURT: Okay, well, I'm dealing with the two that  
22 we're focused on. One of those apartments is the one where you  
23 had been living which is at 117 East 57th Street, and the new  
24 apartment, the sublet that you referenced in your testimony,  
25 that's 200 East 65th Street. Those apartments are

1 approximately eight blocks apart.

2 THE WITNESS: Right.

3 THE COURT: Did you, on a regular basis, go back and  
4 forth between the two apartments because they're effectively in  
5 the same neighborhood to deal with matters that related to your  
6 occupancy in those two apartments?

7 THE WITNESS: Not on a regular basis. Well, biweekly,  
8 let's say.

9 THE COURT: Okay, so by biweekly, do you mean a couple  
10 of times a month, at least?

11 THE WITNESS: Couple of times a month.

12 THE COURT: And when you went from the 65th Street  
13 apartment to the apartment at 117 East 57th Street, did you, on  
14 occasion, pick up accumulated mail?

15 THE WITNESS: Yes, I did.

16 THE COURT: All right, thank you. Those are my  
17 questions.

18 Now, on the basis of the questions that I've asked,  
19 does the debtor have any questions to ask?

20 MR. BERNSTEIN: I have no further questions.

21 THE COURT: All right.

22 Is there anything more that you wish to say, Mr.  
23 Glasser?

24 MR. GLASSER: No.

25 THE COURT: All right, thank you. You're excused.



1 Now, if Mr. Glasser had counsel, one of the things  
2 that would happen now is that I would ask the parties to make a  
3 brief argument as to how the evidence that has been presented  
4 either supports the relief which is being sought or  
5 demonstrates that the relief should not be granted.

6 Do you wish to make an argument?

7 MR. BERNSTEIN: Sure, yes, Your Honor. I'll make a  
8 couple brief statements.

9 The debtors have an affidavit of service that they  
10 delivered notice of the bar date -- bar date notice to Mr.  
11 Glasser at the 117 East 57th Street address. Mr. Glasser has  
12 conceded that he had access to that apartment and did receive  
13 mail at that address during the period of time when the notice  
14 was delivered. Therefore, the actual notice was provided to  
15 Mr. Glasser at the address that he at least had access to.

16 In addition, the notice of the bar date was published  
17 in The Times, The Wall Street Journal which Mr. Glasser  
18 conceded that he reads on a regular basis as part of his job,  
19 and Mr. Glasser has conceded that he, at times, speaks with  
20 former Lehman employees while working at Barclays and certainly  
21 had an opportunity to discuss the Lehman case and whether or  
22 not the parties were filing claims against Lehman, what they  
23 were doing about their various claims.

24 The debtors' position is that Mr. Glasser has not  
25 satisfied the excusable neglect standard. Any reason that he

1 would not file a claim was solely as a result of his own  
2 actions or inactions. He certainly had sufficient notice of  
3 the case and the goings on and the ability to at least inquire  
4 as to whether or not and when he had to file a claim.  
5 Therefore, the debtors do not believe he should be granted  
6 relief pursuant to 9006(b).

7 THE COURT: Okay, Mr. Glasser, do you have anything  
8 you wish to say at this point as to why you should be given the  
9 opportunity to file a late claim. If you have anything -- you  
10 don't have to say anything, but if you wish to say anything,  
11 this is your time.

12 MR. GLASSER: I actually note it's quite possible that  
13 something was delivered to that address. I honestly don't  
14 remember receiving it or seeing it. Certainly if I had, and  
15 read it, I certainly would have done something about it. The  
16 way I actually found out about the bar date was that I happened  
17 to walk into somebody's office who was one of the executives of  
18 Lehman Brothers and moved over to Barclays, and he told me that  
19 the bar date had already passed. If it's deemed that it's my  
20 fault, then I have nothing to say. I mean, it's just -- that's  
21 the way it is and I'll suffer the consequences.

22 THE COURT: Okay, I understand your position. Thank  
23 you, Mr. Glasser.

24 Based upon the declaration of Mr. Glasser, which as  
25 modified, constitutes his direct testimony and the cross-

1 examination by debtors' counsel, it is clear to the Court that  
2 Mr. Glasser does not have an excuse for why he did not receive  
3 actual notice of the bar date and has, in a very candid way,  
4 acknowledged that it may be because of his own failure to have  
5 either noticed the mailing or to have picked it up at the  
6 address at 117 East 57th Street where he acknowledges he  
7 received mail. While this is an unusual circumstance, one of  
8 the quirks of Manhattan life is that 65th Street and 57th  
9 Street represent, effectively, the same neighborhood, and it's  
10 not as if he moved to Santa Monica, California. This was a  
11 move up the street.

12 For that reason, even though he was not physically  
13 present in the apartment at 117 East 57th Street throughout the  
14 relevant period, he did have regular access to that unit and  
15 was able to collect, at his personal convenience, mail that  
16 accumulated there. Under the circumstances, I do not believe  
17 that Mr. Glasser has satisfied the rather rigid standards that  
18 are applicable in the Second Circuit for demonstrating  
19 excusable neglect in the failure to comply with a conspicuous,  
20 clearly-published bar date.

21 I make no findings one way or the other as to whether  
22 Mr. Glasser should have known more about the bar date as a  
23 result of his being an employee of Barclays, and circumstances  
24 surrounding where he worked and his relationship with other  
25 brokers really doesn't change the result. In fact, the

1 statement made that he discovered about the bar date from a  
2 fellow employee but it was too late demonstrates that employees  
3 did talk to one another. It's just in this particular  
4 circumstance, the conversation took place after the bar date,  
5 rather than before the bar date.

6 The real issue is not whether he could have found out  
7 or whether notice of the bar date was properly sent by the  
8 debtor to a residence address for this individual where he had  
9 access to the mail, and in fact, he did. Under the  
10 circumstances, excusable neglect has not been shown under the  
11 Pioneer standard, and the debtor is sustained in its position.

12 Mr. Glasser, you should at least feel some  
13 satisfaction that you were paid the other 100,000, that you are  
14 dealing with less money than you started with.

15 I will entertain an order submitted by the debtor  
16 reflecting the results of today's hearing. And unless there is  
17 anything more for today, we're adjourned.

18 Fine, we're adjourned.

19 (Whereupon these proceedings were concluded at 11:05 AM)  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E X

WITNESS	EXAMINATION BY	PAGE
Mark Glasser	Mr. Bernstein	33

RULINGS

Page Line

Granting of Debtors' Sixty-Seventh Omnibus Objection to Claims	6	23
Granting of Debtors' One Hundred Fifty-Fifth Omnibus Objection to Claims as to as to Blue Angel Claims	7	8
Granting of Debtors' One Hundred Sixty-Second Omnibus Objection to Claims	8	4
Granting of Debtors' One Hundred Fifty-First Omnibus Objection to Claims as to Claim 30569	8	23
Granting of Debtors' One Hundred Fifty-Seventh Omnibus Objection to Claims	9	8

1			
2	Granting of Debtors' One Hundred Fifty-Eighth	9	20
3	Omnibus Objection to Claims		
4			
5	Granting of Debtors' One Hundred Fifty-Ninth	10	16
6	Omnibus Objection to Claims		
7			
8	Granting of Debtors' One Hundred Sixtieth	11	20
9	Omnibus Objection to Claims as Described		
10	on the Record		
11			
12	Granting of Debtors' One Hundred Sixty-First	12	9
13	Omnibus Objection to Claims		
14			
15	Granting of Debtors' One Hundred Ninth	13	2
16	Omnibus Objection to Claims as to the HSBC		
17	Claim		
18			
19	Granting of Debtors' One Hundred Sixty-Third	13	16
20	Omnibus Objection to Claims		
21			
22	Granting of Debtors' One Hundred Sixty-Fourth	14	3
23	Omnibus Objection to Claims		
24			
25			

1			
2	Granting of Debtors' One Hundred Eighteenth	14	15
3	Omnibus Objection to Claims		
4			
5	Granting of Debtors' Seventy-Fourth	18	2
6	Omnibus Objection to Claims		
7			
8	Granting of Debtors' One Hundred Fifty-Second	21	9
9	Omnibus Objection to Claims		
10			
11	Denial of First Motion of Mark Glasser to	44	11
12	Extend Time for Claim		
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

C E R T I F I C A T I O N

I, Hana Copperman, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

Hana  
Copperman

Digitally signed by Hana  
Copperman  
DN: cn=Hana Copperman, o, ou,  
email=digital1@veritext.com,  
c=US  
Date: 2011.08.26 13:54:36 -04'00'

HANA COPPERMAN

AAERT Certified Electronic Transcriber CET\*\*D 487

Also transcribed by:

Sara Davis, AAERT Certified Electronic Transcriber CET\*\*D-567

Karen Schiffmiller, AAERT Certified Electronic Transcriber  
CET\*\*D-570

Dena Page

Veritext

200 Old Country Road

Suite 580

Mineola, NY 11501

Date: August 26, 2011